CITY OF MINNEAPOLIS

CITY COUNCIL

ZONING AND PLANNING COMMITTEE

In re: Appeal of the decision of the Planning Commission denying applications for a nonconforming use certificate and CUP amendment for property located at 331 Ulysses Street Northeast

FINDINGS AND RECOMMENDATION

The above-entitled matter came before the Standing Committee on Zoning and Planning of the Minneapolis City Council on December 4, 2012, in Room 317, City Hall, 350 South Fifth Street, Minneapolis, MN 55415. On October 29, 2012, the City Planning Commission held a public hearing on applications by Metro Star LLC for a certificate of nonconforming use for a roof sign and an amendment to an existing conditional use permit ("CUP") to delete a condition of approval ordering removal of the roof sign for the property located at 331 Ulysses Street Northeast. The Planning Commission denied the applications. Eric Galatz, Esq., appearing on behalf of the applicant, appealed this decision to the City Council pursuant to Minneapolis Code of Ordinances ("MCO") § 525.180. Having held a public hearing on the appeal, the Committee now makes the following findings:

FINDINGS

- 1. Zoned I1 (Light Industrial) district with the UA (University Area) overlay district, the subject site is a 24,411 square foot lot containing an existing automobile repair use.
- 2. According to building permit records, the roof sign (sign structure with two sign faces) was lawfully erected on this property in 1974. At that time, construction of a roof sign was a permitted accessory use in the M1-3 (Light Manufacturing) district. The sign

- became a legal nonconformity on November 12, 1999, when the Zoning Code was amended to prohibit roof signs.
- 3. In February 2008, the Planning Commission approved a CUP for major automobile repair that included a condition of approval ordering the removal of the roof sign based on a presumption of abandonment. This presumption was based on photos from April 2006 and January 2008 that showed blank sign faces with no advertising.
- 4. Legal nonconforming uses of property may be continued, subject to the regulations of Chapter 531 of the Zoning Code, "Nonconforming Uses and Structures." Section 531.40 sets forth the circumstances in which nonconforming use rights may be lost due to discontinuance of the use:

531.40. Loss of nonconforming rights. (a) *Discontinuance*.

- (1) *In general*. If a nonconforming use or structure is discontinued for a continuous period of more than one (1) year, it shall be deemed to be abandoned and may not thereafter be reestablished or resumed. Any subsequent use of the land or structure shall conform to the requirements of the district in which it is located.
- (2) *Rebuttal of abandonment*. A property owner may rebut the presumption of abandonment only by presenting clear and convincing evidence that discontinuance of the nonconforming use or structure for the specified period was due to circumstances beyond the property owner's control. The property owner shall bear the burden of proof.
- In seeking to rebut this presumption via the application for a certificate of nonconforming use, the appellant argues that it has continuously maintained the sign in good condition, offered the signs for use by prospective tenants while marketing the premises, and included specific provisions in every one of its leases to allow tenants to use the roof signs to advertise their businesses. The appellant supported its case with a sworn affidavit, oral testimony, and copies of the lease agreements.

- 6. When the appellant has had tenants, every lease has specifically included use of the sign for advertisement of the tenant's business. During periods of vacancy, the appellant has used the roof sign to advertise that the property was "For Lease" and has painted over the sign face advertising the former business.
- 7. Based upon substantial evidence in the written and testimonial record in this matter, the appellant has met its burden of presenting clear and convincing evidence that the alleged discontinuance was due to circumstances beyond its control. Circumstances beyond the owner's control include the owner's inability to find a new tenant despite diligent efforts to market and lease the property as noted above. It is apparent that the appellant had no intent to abandon the sign.
- 8. A CUP for major auto repair was approved by the City in 2008. The Planning

 Commission found at that time that the required criteria to grant a CUP had been met.

 Based on the rebuttal of abandonment of the roof sign by the appellant, it is also

 appropriate and reasonable to delete the condition of approval that ordered removal of the

 sign. The underlying findings for approval of the CUP in 2008 are still being met. In

 addition, the appellant, as property owner, did not become aware of this condition of

 approval until sometime after the City approved it for his major auto repair tenant. The

 appellant diligently and continuously objected to this condition as soon as it became

 aware of it, including several occasions in 2008.

Therefore, based on the foregoing Findings of Fact, the Committee makes the following recommendation:

RECOMMENDATION

- 1. That the City Council grant the appeal and approve the certificate of nonconforming use for a roof sign and delete the condition of CUP approval for major automobile repair ordering removal of the roof sign for the property located at 331 Ulysses Street Northeast.
- 2. That these Findings be adopted by the City Council as their Findings and be made part of the official record.